

Item No. 37	Classification: Open	Date: 15/01/03	MEETING NAME Overview and Scrutiny Committee
Report title:		Constitutional changes arising from establishment of Community Councils – scrutiny issues	
Ward(s) or groups affected:		All	
From:		Borough Solicitor and Secretary	

RECOMMENDATION(S)

1. That members discuss the potential constitutional changes outlined in this report, and ask officers to draft amendments for consideration at the committee's next meeting

BACKGROUND INFORMATION

2. Following Council Assembly's decision to establish Community Councils, a series of amendments need to be made to the constitution in order to introduce Community Councils, delegate a mixture of executive and non-executive decision making powers to them, and subject the executive decisions to formal call-in by Overview and Scrutiny Committee. This report is concerned only with the scrutiny aspects of the constitutional change. Overarching reports have been made to Standards (18 December 2002) and to the Executive (14 January 2003). Detailed discussions will take place in Overview and Scrutiny, Licensing and Planning Committees during January and February, with Standards considering specific constitutional amendments at its 12 February meeting, as a result of which it will formulate recommendations to Council Assembly.

Any views expressed by the Executive on the 14th January 2003 will be reported to the Overview and Scrutiny Committee. An extract from the report considered by the Executive is attached as Appendix C.

KEY ISSUES FOR CONSIDERATION

3. The areas where the constitution needs to be amended in order to update the scrutiny arrangements are:
 - a. Article 6 - need to define scrutiny's role/functions in respect of Community Councils
 - b. Overview and Scrutiny Procedure rules – call in rules to be adapted to apply to executive decisions taken by Community

Councils

Article 6 – Overview and Scrutiny Committee and Sub-Committees

4. The article as agreed at Constitutional Council in May 2002 is attached at Appendix A for ease of reference.

5. Members are asked to consider the following areas for possible amendment:

a. Functions of scrutiny:

What should the relationship be between scrutiny committees and community councils? Should community councils be open to scrutiny in a wide sense, or should the formal scrutiny role be confined to individual executive decisions which have been delegated to community councils? Should community councils be able to request scrutiny inquiries on given topics, as the executive and council assembly do in the present arrangements?

b. Terms of reference of Overview and Scrutiny Committee:

Amend para 6.05(j) to extend call-in power to executive decisions made but not yet implemented by the executive AND by community councils

Scrutiny Procedure rules

6. Attached at Appendix B for ease of reference. Members are asked to consider the following areas for possible amendment:

a. Para 5 Members entitled to sit on the co-ordinating Overview and Scrutiny Committee and Sub-Committees

1. As a matter of good practice, Members should not scrutinise their own decisions. Therefore, a Member serving on a Community Council (who is also a Member of the Overview & Scrutiny Committee) who participates in taking an executive decision should not sign a call-in request on the same decision (thus avoiding any conflict of interest).

2. Arising from point 1 above, in the circumstances when a Member has participated in taking an executive decision, then a Reserve Member (Overview & Scrutiny Committee) could be entitled to consider whether they wish to sign a call-in. This would assist in maintaining the pool of Members able to call-in decisions. The constitution would need to be amended to accommodate this change.

b. Para 16 Members and Officers Giving Account

Should community councils be drawn in here? E.g. should it be open to scrutiny committees to call in chairs of Community Council as they currently do with executive members?

c. Paras 18-19 Call-in

All references to decisions taken by executive should be amended to cover executive decisions taken by community councils.

Resource implications

No fresh resource implications arise from these constitutional changes.

Consultation

None

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
<i>Southwark Council Constitution 2002</i>	<i>Constitutional Support Unit</i>	<i>Shelley Burke</i> <i>020 75257344</i> shelley.burke@southwark.gov.uk

Audit Trail

Lead Officer Deborah Holmes, Borough Solicitor and Secretary
Report Author Shelley Burke, Constitutional Support Unit Team Leader (Scrutiny)
Version Final
Dated 6th January 2003

CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER

Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	No	No
Executive Member	No	No

EXTRACTS FROM EXECUTIVE REPORT ON “COMMUNITY COUNCILS - CONSTITUTIONAL ISSUES” CONSIDERED ON 14TH JANUARY 2003

Decision by Council Assembly on 27th November 2002

7. Council Assembly on the 27th November 2002 agreed the Council’s policy on local decision-making and the establishment of community councils with devolved decision-making powers with effect from 1st April 2003.
8. It was agreed the following functions be devolved in part to Community Councils in Phase 1, subject to changes in the constitution:

Non- executive functions

Planning; and
Licensing

Executive functions

Community Safety Capital;
Local traffic management issues;
Environmental Improvement Programme Capital;
Appointments to the governing bodies of primary schools.

Scrutiny and Call-in

14. As outlined in paragraph 8, Community Councils will take decisions in respect of both executive and non-executive functions. Minor amendments to Article 6 of the constitution and to the Overview & Scrutiny Procedure Rules are desirable to clarify the general role of overview and scrutiny in relation to Community Councils. In addition, some policy choices are required as to how the Overview & Scrutiny Committee’s power to Call-In decisions made but not yet implemented should be exercised. Officers have prepared for consideration by Overview & Scrutiny Committee on 15th January 2003 a separate discussion paper on scrutiny issues.
15. It is important to be clear on the distinction between “ordinary” post-decision scrutiny and the special power to “Call-In” a decision and prevent it being implemented. The Overview & Scrutiny Committee (and by extension its sub-committees) has a general power to review or scrutinise decisions made, or other action taken, in connection with the discharge of any of the Council’s functions (both executive and non-executive). This power extends to Community Councils (which are, in law, “Area Committees”). In addition, the Overview & Scrutiny Committee also has a limited “Call-In” power to prevent executive decisions from being implemented, for a short period, to allow the Overview and Scrutiny Committee to review the decision.

When can a matter be called-in?

16. The exact rules relating to call-in are for local determination, provided the statutory minimums are met. Currently, the Chair or Vice-Chair plus three members of the Overview & Scrutiny Committee may call-in any decision taken by the Executive, and key decisions on executive functions taken by officers

under delegated authority. Call-in requests should normally be made only if there is evidence that the decision was not taken in accordance with the clear principles of decision-making set out in the Constitution.

17. Officers are recommending that the existing provision be extended to cover all executive decisions taken by Community Councils. This is the same approach that currently applies to Executive meeting decisions.

Process following Call-In

18. The Constitution would also have to state the process after call-in. The current practice is for the decision to be considered by Overview & Scrutiny Committee. Currently, Overview & Scrutiny Committee can:
 - Refer the decision back to the decision-making body or person for reconsideration, setting out in writing the nature of its concerns; or
 - Refer the matter to Council Assembly if the decision is deemed to be outside the policy and budget framework.¹
19. The Overview & Scrutiny Procedure Rules would need to be amended to apply this provision to Community Councils. An implication of this change is that the time period available to the decision-maker to reconsider the decision is currently 7 clear working days. This may be problematic when arranging extraordinary Community Council meetings at short notice and engaging public involvement. There are a number of issues relating to conflicts of interests, the pool of Members available to sign a call-in request and some suggested options on the time period for the decision-maker to reconsider a decision; these are set out in Appendix 2.
20. Article 6 of the Constitution, Overview and Scrutiny Committee and Sub-Committees, would also have to be amended to clarify the general role of Overview and Scrutiny in relation to Community Councils.

Appendix 2

Constitutional Issues for Consideration by the Executive

No.	Issue	Reference	Proposed Changes/Options	Comments/Recommendation
4.	Article 6: Overview & Scrutiny Committee and Sub-Committees			
	<u>Functions of Scrutiny</u>	6.02: General Role 6.03: Specific Functions – Scrutiny	There are number of issues for consideration: What should the relationship be between scrutiny committees and Community Councils?	Overview & Scrutiny Committee to be asked to consider these issues.

¹ Paragraph 19.4, Overview & Scrutiny Procedure Rules

No.	Issue	Reference	Proposed Changes/Options	Comments/ Recommendation
			<p>Should Community Councils be open to scrutiny in a wide sense, or should the formal scrutiny role be confined to individual executive decisions, which have been delegated to Community Councils?</p> <p>Should Community Councils be able to request scrutiny inquiries on given topics, as the Executive and Council Assembly do in the present arrangements?</p>	
	Overview and Scrutiny Procedure Rules			
	Scope of call-in	Para. 18.4 Overview & Scrutiny Procedure Rules	Extend the scope of call-in to cover all executive decisions taken by Community Councils. This is the same approach that currently applies to Executive meeting decisions.	Noted.
1.1	Call-in threshold	Para. 18.6 Overview & Scrutiny Procedure Rules	<p>Extend the existing threshold to Community Council executive decisions.</p> <p>There are a number of implications if the threshold is extended:</p> <ol style="list-style-type: none"> 3. As a matter of good practice, Members should not scrutinise their own decisions. Therefore, a Member serving on a Community Council (who is also a Member of the Overview & Scrutiny Committee) who participates in taking an executive decision should not sign a call-in request on the same decision (thus avoiding any conflict of interest). 4. Arising from point 1 above, in the circumstances when a Member has participated in taking an executive decision, then a Reserve Member (Overview & Scrutiny Committee) could be entitled to consider whether they 	<p>Noted.</p> <p>Executive to express view on the implications of extending threshold.</p>

No.	Issue	Reference	Proposed Changes/Options	Comments/ Recommendation
			<p>wish to sign a call-in. This would assist in maintaining the pool of Members able to call-in decisions. The constitution would need to be amended to accommodate this change.</p>	
	<p>Referral following consideration of a called-in by Overview & Scrutiny Committee</p>	<p>Para. 19 Overview & Scrutiny Procedure Rules</p>	<p>Following consideration of a call-in decision, Overview & Scrutiny Committee can refer the decision back to the decision-maker, i.e. Community Council, and ask for the decision to be reconsidered.</p> <p>Overview & Scrutiny Procedure Rules need to be extended to include this provision.</p> <p>An implication of this change is that the time period for which the decision-maker has to reconsider the decision is currently only 7 working days. This may be problematic when arranging extra-ordinary Community Council meetings at short notice and engaging public involvement. There are a number of options:</p> <p>Option A – Retain existing provision of 7 working days.</p> <p>Option B – Review existing provision of 7 working days, and in addition allow the Borough Solicitor in consultation with the relevant Chief Officer to determine whether the matter can wait until the next scheduled meeting of the Community Council.</p>	<p>Executive to consider implications of referral to Community Councils following call-in. Overview & Scrutiny Committee will also be considering this issue.</p> <p>It is important that once a decision is called-in it is dealt with and implemented as soon as possible. May be more difficult to convene Community Council. Benefits to decision been resolved locally where possible.</p>